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Southern Labor Services, Inc./Florida Transportation Services, Inc., Joint Employers and International Longshoremen's Association, AFL-CIO, by its Subordinate Locals, Local 1359 and 1922, Petitioner. Case 12-RC-8602

October 1, 2001

DECISION, DIRECTION, AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

The National Labor Relations Board, by a three-member panel, has considered objections and determinative challenges to an election held on March 15, 2001, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally shows 21 votes for and 21 votes against the Petitioner, with 4 challenged ballots, a sufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs and has adopted the hearing officer's findings and recommendations.¹

The hearing officer recommended sustaining Petitioner's Objection 2A, which alleged that, at a March 8, 2001 meeting attended by nearly all employees, the Joint Employers threatened loss of contracts and employment if the employees voted for union representation. We adopt the recommendation and sustain the objection for the following reasons.

The president of the Joint Employers' Port Canaveral operations, John Gorman Jr., testified that, at the March 8, 2001 meeting of nearly all employees,

I said you are playing Russian roulette if you vote the union in. I said one Disney—one bullet Disney—is with a Disney bullet and they can cancel at anytime for any reason.² I have no control over that. And the other bullet is Florida Transportation Services can negotiate, can leave and do—we have the option to do whatever we deem necessary for our business.

Gorman further stated at the meeting that one of the Employers' options would be "to go close down and go south" if negotiations went badly.

The hearing officer found that Gorman's own testimony established that a threat or implied threat to close down the Joint Employers' operation was communicated to all, or nearly all, bargaining unit employees. We agree.

The Supreme Court in *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 616–620 (1969), held that an employer may lawfully communicate to his employees "carefully phrased" predictions based on "objective facts" as to "demonstrably probable consequences beyond his control" that he believes unionization will have on his company. However, the Court cautioned that if there is "any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him," the statement is a threat of retaliation. See also *Daikichi Sushi*, 335 NLRB No. 53, slip op. at 2–3 (2001).

Here, Gorman stated that the employees were "playing Russian roulette" and that there were two bullets, one that could result in Disney, their only customer, terminating the business relationship, and the other that could result in the Joint Employers' closing down and relocating elsewhere. Neither of these predictions of possible adverse consequences was supported by any objective facts. Under the well-established principles outlined above, both therefore clearly interfered with the employees' free choice in the election and were objectionable. See *Daikichi Sushi*, supra, and cases cited there (it is no defense that prediction is phrased as a possibility rather than a certainty). See also *Blaser Tool & Mold Co.*, 196 NLRB 374 (1972) (company president unlawfully stated, without any objective factual basis, that major customer was free to withdraw its patronage at any time and that he was apprehensive that it would do so if the employees voted for the union).

¹ In the absence of exceptions, we adopt pro forma the hearing officer's recommendations that Petitioner's Objections 1, 2B, 3, and 4 be overruled, that Objection 5 be withdrawn, and that the challenges to the ballots be overruled.

² Disney is the Joint Employers' only customer. The Joint Employers' 2-year contract with Disney expired last year, and no new contract was negotiated. Thus, Disney could terminate the business relationship for any reason whatsoever.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

DIRECTION

IT IS DIRECTED that the Regional Director for Region 12 shall, within 14 days from the date of this Decision, Direction, and Order, open and count the ballots of Chuck Malone, Thomas Baron, Clinton Hodge Jr., and Calvin Bartlett and thereafter prepare and serve on the parties a revised tally of the ballots. If the revised tally shows that the Petitioner has received a majority of the votes cast, the Regional Director shall issue a certification of representative. If the revised tally shows that the Petitioner did not receive a majority of the votes cast, the election shall be set aside and a second election shall be conducted.

ORDER

It is ordered that this proceeding is remanded to the Regional Director for Region 12 for further appropriate action.

Dated, Washington, D.C. October 1, 2001

Wilma B. Liebman, Member

John C. Truesdale, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD